



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Conduct Public Hearing to consider the appeal from Neumiller & Beardslee, on behalf of Legends Unlimited, regarding the Planning Commission's decision to revoke Use Permit No. 99-02 for Legends Unlimited.

MEETING DATE: August 21, 2002

PREPARED BY: Community Development Director

RECOMMENDED ACTION: That the City Council uphold the Planning Commission's decision and revoke use permit 99-02 effective September 19, 2002 unless a change of ownership occurs prior to that date.

BACKGROUND INFORMATION: On July 10, 2002, the Lodi Planning Commission took action to revoke Use Permit 99-02 for Legends located at 27 West Elm Street. The Commission's action provided for an effective date of the revocation of September 19, 2002 if the business has not been transferred to an unrelated entity. Should a transfer occur prior to September 19th, the Use Permit would remain in effect with the new owner.

As the Planning Commission packet outlines, staff from the City met with representatives of Legends beginning in June 2001. The purpose of the initial meeting was to describe what staff felt was inappropriate activity occurring at the business. Specifically, the Use Permit for the business is based on the fact that Legends would operate as a bona fide restaurant. Also, there are an excessive number of calls for Police service.

With regard to the issue of restaurant service, the belief is that Legends does not operate within the industry norm. As an example, the State Department of Alcoholic Beverage Control (ABC) presumes that a licensee is operating as a bona fide eating place if the gross sales of food prepared and sold to guests on the premises exceeds the gross sales of alcoholic beverages. The Stockton office of ABC conducted an audit of the business for the period from January 1, 2001 to December 2001 and found that Legend's gross sales for alcoholic beverages exceeded \$500,000 and food sales were just over \$40,000 or less than ten percent of total sales.

The discussion about excessive Police calls for service was not as clear for the Commission. In fact, the majority of the Commission felt that staff did not present enough data to base their decision to revoke the Use Permit. That having been said, the alcohol vs. food sales issue was enough for their ultimate decision.

Even though the Commission found the information regarding Police calls for services lacking, we still feel that it is important to present the information to the City Council. As the Council is aware, the Police

APPROVED: _____

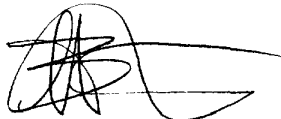

H. Dixon Flynn -- City Manager

Department logs calls for service by address in the community. Further, the call is described on this log by the type of incident. Within this log, which runs from June, 2001 to the Planning Commission hearing date of July 10, 2002 there were 75 calls of various types that the Police Department considers serious. Of note are the 10 calls since May 15, 2002, which is when staff informed Legends that we were scheduling a public hearing for Planning Commission review.

The second piece of information that is included for City Council's benefit is a study that was conducted by CLEW Associates from Berkeley, CA. That study looked at alcohol and/or drug incidents within the City of Lodi for calendar year 2000. Associates of the firm reviewed all the Police reports for the timeframe involved, and culled out just those that were associated to alcohol or drugs. The basis of the study is to help the city and local groups understand any patterns that might exist geographically. A result of the study indicates specific calls for Police service by alcohol outlet location. The listing shows all off-sale (consumption off premises) and on-sale (restaurant or bar) locations in the City ranked by the number of alcohol or drug calls and arrests. As shown, Legends ranked #2 for on-sale establishments with 29 incidents and 35 arrests. The types of incidents included assaults, drunk in public, and under the influence of drugs. For further clarification, it should be noted that for restaurants, in the City of Lodi, the average number of calls was 3.7 and for bars it was 11.8.

Again the issue before the City Council is to determine whether the Planning Commission's decision is appropriate. Even if you disregard the issue of Police calls for service, as the Commission did, the concern over Legend's lack of ability to operate as a restaurant is enough to support the Commission's action. I would note that the owners of Legends themselves must concur with that conclusion otherwise why would they represent to the City Council that they are now seeking a different type of alcohol license that does not require food sales?

FUNDING: None required

A handwritten signature in black ink, appearing to read 'Konradt Bartlam', with a long horizontal line extending to the right.

Konradt Bartlam
Community Development Director

KB/lw

Attachments

***TO AVOID DUPLICATION OF LARGE
DOCUMENTS IN THE FORTIS SYSTEM,
ADDITIONAL BACKGROUND INFORMATION
REGARDING THIS ITEM IS LOCATED AS
FOLLOWS:***

Public Hearings sub-folder
(includes full staff report,
attachments, and proofs
of publication)

(Note: This PIT was continued)